IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6953 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHEBOOB UMARBHAI KHATKI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 6953 of 2003

MR PRAVIN GONDALIYA for Petitioner No. 1

MR RM CHAUHAN Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 01/10/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed against him by the Police Commissioner, Rajkot City on

2.5.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short).

The grounds served upon the petitioner and placed on record disclose that the detaining authority took into consideration two aspects of the matter; first, registration of fice crimes against the petitioner under sec. 66B, 65E, 81,98 and 99 of the Bombay Prohibition Act on 22.9.2002, 4.12.2002, 5.2.2003, 3.3.2003 and 22.4.2003. The detaining authority also took into consideration the statements of the witnesses recorded in-camera, by the proposing authority on 30.4.2003 and verified by the detaining authority on 1.5.2003 revealing the incidents of 27.2.2003 and 23.11.2002 wherein it is alleged that the petitioner and his associates demanded money from the witness and on refusal, he was beaten, while in other incident, the witness was forced to use his vehicle for transporting the illegal liquor and on refusal, he was beaten. From the above material, the order impugned came to be passed.

Ld. advocate Mr. PS Gondalia for the petitioner and Ld. AGP Ms. Panchal were heard at length. Affidavit filed by the detaining authority is also taken into consideration.

Various contentions raised on behalf of the petitioner and controverted by ld. AGP, it appears that the matter can be disposed of on the ground whether from the available material, it could be said that the detaining authority reached to reasonable satisfaction that the activity of the petitioner was prejudicial to the public order. In this respect, it may be noted that the registration of crime against the petitioner under the Bombay Prohibition Act whereby some quantity of country liquor was seized from the petitioner could be hardly be said to have affected the public order. Moreover, these cases are still pending in the court. Further, the material which was available with the detaining authority wherein the shape of the statements of the witnesses whose identity was not disclosed in pursuance of sec. 9(2) of the PASA Act. Now, referring to the statements as recorded, it clearly transpired that the petitioner pick up casual and stray quarrels with the witnesses and those statements are taken on their face value cannot be said to have affected the public order. In each case, the courts have to see the length, magnitude and intensity of the questionable activity of person to find out whether his activities are prejudicial

to maintenance of public order. Having gone through the statements carefully, it is clear that neither the public order could be said to be disturbed not the tempo of public life is affected by whatever stated by the witnesses before the proposing authority. At the most, it can be said to be a problem of maintenance of law and order and can be taken care of by the ordinary law. True, it is that the witnesses have made general statements as to the head strong propensity of the petitioner to create the terror and fear in the particular locality. But than while claiming privilege under sec. 9(2) of the PASA Act, the apprehension expressed by the informant is whether honest, genuine and reasonable is not enquired into by the detaining authority, not only that but the general back ground, character, antecedents, criminal tendency or propensity, etc. of the detenu is also likely to be enquired into by the detaining authority with a view to satisfying itself that the apprehension is not imaginary or fanciful. The detaining authority is also required to carefully examined contemporaneous record in this respect. Therefore, having gone through the grounds placed on record carefully, , it clearly appears that the subjective satisfaction of the detaining authority is vitiated on the ground that there was no material before the detaining authority to come to the conclusion that the activities of the petitioner was prejudicial to the public order. The order in question, therefore, is required to be quashed and set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 2.5.2003 by the Police Commissioner, Rajkot city under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs. DS Permitted.

(J.R. VORA, J.)

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